



P.G. Diploma Cyber Law

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THE CASES RELATED TO PRIVACY

This is a brief review of some of the cases related to PRIVACY filed under section 46 of the IT Act, 2000, seeking adjudication for alleged contraventions of the Act in the State of Maharashtra.

In the State of Maharashtra, there have been a total of 47 cases filed under section 46 of the Act. Of these, 33 cases have been disposed of by the Adjudicating Officer and 14 are currently pending disposal. At least three of these cases before the Adjudicating Officer deal with issues related to **privacy of communications and personal data**. In all three cases the Adjudicating Officer was called upon to determine and penalize unauthorized access to personal data of the complainants.

1 Vinod Kaushik v. Madhvika joshi case(2011),

The **complainants' emails and chat sessions** were accessed, copied and made available to the police for legal proceedings without the permission of the complainants.

The complaint was filed in 2010 **for privacy violations**, against the complainant's daughter-in-law / respondent, who was separated from her husband, the complainant's son.

The respondent/daughter-in-law, had independent of the proceedings before the Adjudicating Officer, also instituted criminal proceedings alleging cruelty and dowry-related harassment against her estranged husband and the complainant.

To support some of the claims made in the criminal proceedings, **the respondent accessed the e-mail accounts of her estranged husband and the complainant** and printed copies of certain communications, both emails and chat transcripts.

The present complaint to the Adjudicating Officer was made in relation to these emails and chat transcripts that were obtained without the consent and knowledge of the complainant and his son. In 2010, the then Adjudicating Officer **dismissed the complaint** after finding that, owing to the marriage, there was a relation of mutual trust between them(husband & wife) that resulted in the complainant and his son *consensually sharing their email account passwords* with the respondent.

This ruling was appealed to the Cyber Appellate Tribunal ("CyAT") which, in a decision of 2011, *found irregularities in the complainant's son's privity to the proceedings and remanded the complaint to the*

Adjudicating Officer for re-adjudication. The re-adjudication, which was conducted by Adjudicating Officer, resulted in a final order in .2011 that is the subject of this analysis.

In the re-adjudication, the new Adjudicating Officer correctly noted that the respondent wife could have chosen to approach the police or a court to follow the proper investigative procedure for accessing emails and other private communications of another person and that her unauthorised use of the complainant's passwords amounted to a violation of their privacy

The final order found that the respondent had violated the privacy of the complainant and his son by her unauthorised access of their email accounts and sharing of their private communications. However, the Adjudicating Officer found that the intent of the unauthorised access – to obtain evidence to support a criminal proceeding – was mitigatory and hence ordered the respondent to pay only a small token amount in compensation, not to the complainants but instead to the State Treasury. The Delhi High Court, which was moved in appeal because the CyAT was non-functional, upheld the final order in its decision of 2012.

2 *Amit Patwardhan v. Rud India Chains(2013) ; Nirmalkumar Bagherwal v. Minal Bagherwal (2013)* cases, the complainants' financial information in the form of bank account statements were obtained from their respective banks without their consent and **used against them in legal proceedings.**

FACTS: The *Amit Patwardhan* , complaint was filed against the complainant's ex-employer(the respondent) for illegally obtaining copies of the complainant's bank account statement. The complainant had left the employment of the respondent to work with a competing business company but not before colluding(get-together) with the competing business company and diverting the respondent's customers to them. The respondent/ex-employer filed **suit for a decree of compensation** and lead the **complainant's bank statements in evidence** to prove **unlawful gratification.**

ISSUE: Since the bank statements were obtained electronically by the respondent without the complainant's consent, the jurisdiction of the Adjudicating Officer was invoked. In his order,the Adjudicating Officer, found that the respondent had, by unlawfully obtaining the complainant's bank account statements which **constitute sensitive personal data, violated the complainant's privacy.** *The Adjudicating Officer judiciously applied the equitable doctrine of clean hands to deny compensation to the complainant; however, because the complainant's bank was not a party to the*

complaint, the Adjudicating Officer was unable to make a ruling on the lack of action by the bank to protect the sensitive personal data of its depositors.

The *Nirmalkumar Bagherwal v. Minal Bagherwal (2013)* complaint bears a few similarities to the preceding two cases. Like the *Vinod Kaushik* matter, the issue concerned the manner in which a wife, estranged but still legally married, *accessed e- records of personal data of the complainants;* and, like the *Amit Patwardhan* matter, the object of the *privacy violation was the bank account statements of the complainants* that *constitute sensitive personal data.*

FACTS: The respondent was the estranged wife of one of the complainants who, along with his complainant father, managed the third complainant company. The respondent, filed a case for maintenance against the complainant and his family in an independent legal proceeding,

ISSUE: In support of her claim for maintenance, she(respondent 1) **obtained certain bank account statements** of the complainants without their consent and, possibly, with the involvement of the **respondent(no.2) bank.**

DECISION: After reviewing relevant law from the European Union and the United States, and observant of relevant sectoral regulations applicable in India including the relevant Master Circular of the Reserve Bank of India, and **further noting preceding Cnsumer Case Law on the subject,** the Adjudicating Officer issued an order in 2013.

“It was found that the complainant’s right to privacy was violated by both the respondents but, while determining the quantum of compensation, distinguished between the respondents in respect of the degree of liability; the respondent wife was ordered to pay a token compensation amount, while the respondent bank was ordered to pay higher compensation to each of the three complainants individually.”

3 Rupa Mahajan Pahwa,(2008) st. Consumer protection Commission Delhi

However, the reliance placed on the decision of the Delhi State Consumer Protection Commission in the matter of Rupa Mahajan Pahwa,(2008), where the Commission found that unauthorised access to a bank pass book by an estranged husband violated the privacy of the wife, would suggest that judges clothe financial information with a standard of privacy higher than that given to e-mails.

4 PUCL case (Supreme Court of India, 1996)SCC--e-mails are a form of electronic communication while it did not explicitly deal with the standard of protection accorded to emails, held that personal communications were protected by an **individual right to privacy** that emanated from the **protection of personal liberty guaranteed under Article 21** of the Constitution of India. Following the *Maneka Gandhi case (SCC, 1978)*

RIGHT TO PRIVACY INCLUDED IN ART-21 SUBJECT TO REASONABLE PROCEDURE

It is settled that persons may be deprived of their personal liberty only by a just, fair and reasonable procedure established by law. As a result, interceptions of private communications that are protected by Article 21 may only be conducted in pursuance of such a procedure. This procedure exists in the form of the Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 ("**the Interception Rules**"). The Interception Rules set out a regime **for accessing private e-mails in certain conditions U/S 91 of ("CrPC") to obtain data at rest, such as emails stored in an inbox or sent-mail folder.**

Criticism to non-judicial AOs:

- **Lack of judicial experience:** The high quality of each of the three orders bears specific mention. Despite the excellent quality of the judgments of the Indian higher judiciary in the decades after independence, **the overall quality of judgment-writing appears to have declined.** Judgements by non-judicial Adjudicators appears to be not well delivered, not well-reasoned, vague/unclear orders incompatible of legal issues. Hence AOs must have the experience of BOTH LAW & IT-neither Law only, nor IT only.
- The Adjudicating Officer has indicated that the institutions that hold sensitive personal data, such as financial information, are subject to a *higher duty of care in relation of it.*
- But, most importantly, the act of imposing monetary compensation of privacy violations is a step forward because, for the first time in India, *it recognises that privacy violations are civil wrongs or injuries that demand compensation.*
